

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUSTIN GERMAINE,

Plaintiff,

-against-

JAMES GIBBS, et al.,

Defendants.

ORDER OF SERVICE

23-CV-01305 (PMH)

PHILIP M. HALPERN, United States District Judge:

Justin Germaine (“Plaintiff”), who is currently incarcerated at FCC Oakdale in Louisiana, brings this action alleging that Defendants were deliberately indifferent to his serious medical needs in violation of the Eighth Amendment when he was incarcerated at FCI Otisville. The Complaint named the following individuals as Defendants: (1) “Mr. Gibbs - Medical Staff”; (2) “Lieutenant John Doe - SIS Lieutenant”; (3) “John Doe (A) - Intake Officer”; (4) “John Doe (B) - Intake Officer”, (5) “John Doe (C) - Medical Intake.” (Doc. 1, “Compl.”) The Court granted Plaintiff’s application to proceed *in forma pauperis* (“IFP”) on February 24, 2023. (Doc. 4).

The Court issued an Order of Service on March 1, 2023 which (1) added the United States of America as a Defendant to this action; (2) directed service on Mr. Gibbs; and (3) directed, pursuant to *Valentin v. Dinkins*, 121 F.3d 72 (2d Cir. 1997), the United States Attorney’s Office (“USAO”) to identify the John Doe Defendants. (Doc. 6). The USAO, on May 22, 2023, identified Mr. Gibbs as James Gibbs, John Doe A as Ricardo Rosado, John Doe B as Justin Hager, John Doe C and Kevin Smith. (Doc. 11). The USAO represented that it was unable to identify the unnamed Defendant identified in the Complaint as “Lieutenant John Doe - SIS Lieutenant.” (*Id.*). The USAO further represented that counsel for the Federal Bureau of Prisons is authorized to accept service on behalf of Defendants Ricardo Rosado, Justin Hager, and Kevin Smith and that those Defendants

“may be served by delivering copies of the summonses and Amended Complaint to John Wallace, Attorney-Advisor, MDC Brooklyn - Federal Bureau of Prisons, 80 29th Street, Brooklyn, NY 11232.” (*Id.*). Plaintiff filed the Amended Complaint on June 13, 2023 adding the United States of America and the newly identified Defendants as parties. (Doc. 13).

Because Plaintiff has been granted permission to proceed IFP, he is entitled to rely on the Court and the U.S. Marshals Service to effect service.¹ *Walker v. Schult*, 717 F.3d. 119, 123 n.6 (2d Cir. 2013); *see also* 28 U.S.C. § 1915(d) (“The officers of the court shall issue and serve all process, and perform all duties in [IFP] cases.”); Fed. R. Civ. P. 4(c)(3). To allow Plaintiff to effect service on the newly identified Defendants through the U.S. Marshals Service, the Clerk of Court is instructed to fill out a U.S. Marshals Service Process Receipt and Return form (“USM-285 form”) for the newly identified Defendants Ricardo Rosado, Justin Hager, and Kevin Smith. The Clerk of Court is further instructed to issue summonses and deliver to the Marshals Service all the paperwork necessary for the Marshals Service to effect service upon Defendants Ricardo Rosado, Justin Hager, and Kevin Smith.

If the Amended Complaint is not served within 90 days after the date the summonses are issued, Plaintiff should request an extension of time for service. *See Meilleur v. Strong*, 682 F.3d 56, 63 (2d Cir. 2012) (holding that a plaintiff proceeding IFP must request a further extension of time to serve defendants if “it becomes apparent that the Marshals will not accomplish [service] by the Rule 4(m) or court-ordered deadline”). Plaintiff must notify the Court in writing if his address changes, and the Court may dismiss the action if Plaintiff fails to do so.

¹ Although Rule 4(m) of the Federal Rules of Civil Procedure generally requires that a summons be served within 90 days of the date the complaint is filed, Plaintiff is proceeding IFP and could not have served the summons and the complaint until the Court reviewed the complaint and ordered that the summons be issued. The Court therefore extends the time to serve until 90 days after the date the summons is issued.

CONCLUSION

The Clerk of Court is instructed to issue summonses, complete the USM-285 form with the addresses for Defendants Ricardo Rosado, Justin Hager, and Kevin Smith and deliver all documents necessary to effect service to the U.S. Marshals Service. The Clerk of Court is further directed to amend the name of Defendant Mr. Gibbs to “James Gibb” in the caption for this action.

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. *Cf. Coppedge v. United States*, 369 U.S. 438, 444-45 (1962) (holding that an appellant demonstrates good faith when he seeks review of a nonfrivolous issue).

SO ORDERED.

Dated: White Plains, New York
August 2, 2023

A handwritten signature in black ink, appearing to read 'Philip M. Halpern', written over a horizontal line.

PHILIP M. HALPERN
United States District Judge

DEFENDANTS AND SERVICE ADDRESS

1. Ricardo Rosado
Attn: John Wallace, Attorney-Advisor
MDC Brooklyn – Federal Bureau of Prisons
80 29th Street
Brooklyn, NY 11232
2. Justin Hager
Attn: John Wallace, Attorney-Advisor
MDC Brooklyn – Federal Bureau of Prisons
80 29th Street
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3. Kevin Smith
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